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KMCA, KU
SUBJECT: KUWAIT'S 2010 TIP REPORT SUBMISSION: PART 1

REF: STATE 2094

11. (SBU) Part 1 of Embassy Kuwait's submission for the 2010 Trafficking in Persons (TIP) report follows.

12. (SBU) Responses are keyed to paragraphs 25 to 27 of reftel.

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THE COUNTRY'S TIP SITUATION
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13. (SBU) Please find below responses to questions in paragraph 25 of reftel:

25A Question: What is (are) the source(s) of available information on trafficking in persons? What plans are in place (if any) to undertake further documentation of human trafficking? How reliable are these sources?

25A Answer: There are no GOK sources of available information on trafficking in persons and there are no plans to undertake further documentation of human trafficking. NGOs, the local press, lawyers, and labor attaches from labor-sending countries are the most reliable non-official sources.

The Government of Kuwait (GOK) keeps reliable records on the number of foreign workers (the primary victims of trafficking in Kuwait) in the country, as do source countries, to a lesser degree of reliability. Post has requested these numbers repeatedly during numerous meetings with GOK interlocutors at the relevant ministries as well as submitting a request through the Ministry of Foreign Affairs (MFA) but, to date, has not received any statistical data.

The Ministry of Social Affairs and Labor (MOSAL) informed post that approximately 300 domestic workers -- which is the group most vulnerable to trafficking and abuse -- enter and leave the Temporary Domestic Worker's Shelter per year. The shelter has a maximum capacity of 40 occupants.

25B Question: Is the country a country of origin, transit, and/or destination for men, women, or children subjected to conditions of commercial sexual exploitation, forced or bonded labor, or other slave-like conditions? Are citizens or residents of the country subjected to such trafficking conditions within the country? If so, does this internal trafficking occur in territory outside of the government's control (e.g. in a civil war situation)? From where are people recruited or from where do they migrate prior to being subjected to these exploitative conditions? To what other countries are people trafficked and for what purposes? Provide, where possible, numbers or estimates for each group of trafficking victims. Have there been any changes in the TIP situation since the last TIP Report (e.g. changes in

destinations)?

25B Answer: Kuwait is a destination country for men, women, or children sometimes subjected to slave-like conditions. There are no reports of citizens being trafficked. Trafficking does occur within the country's borders; however, there is no trafficking in areas outside of GOK control.

Kuwait's two million foreign workers, some of whom are subjected to exploitative conditions, are mostly from India (estimated 580,000), Egypt (est. 430,000), Bangladesh (est. 220,000), Syria (est. 140,000), Pakistan (est. 130,000), the Philippines (est. 110,000), Sri Lanka (est. 100,000), Indonesia (est. 65,000), Iran (est. 50,000), and Jordan (est. 50,000). Many of Kuwait's expatriate workers complain of violations of their rights as workers, though most of these cases do not meet the definition of trafficking in persons. The GOK and most source-country embassies do not distinguish between simple labor violations and those of trafficking, making it unclear as to the real number of trafficking victims.

Concerning numbers or estimates for groups of trafficking victims, the group of workers most vulnerable to trafficking are women who work as domestic workers, who number an estimated 550,000. According to NGO reports, the local press, and sending-country labor attaches, hundreds of Kuwait's domestic workers are being subjected to abuse and other forms of trafficking. Trafficking in persons remains a problematic issue in Kuwait.

Source country embassies and NGOs do not report any major changes in governmental efforts to combat trafficking as compared to the previous year, although there were minor improvements in some areas.

In the past year, the GOK took some steps to increase knowledge and awareness of trafficking-related issues. The government partially fulfilled the four commitments that were made in 2007 in order to demonstrate significant effort. The four commitments and the status of progress are as follows:

i. Increase the number of investigations and prosecutions of trafficking-related crimes. Make available statistics on trafficking-related prosecutions, convictions and sentences achieved during the assessment period. Status of progress: For the first time, the GOK provided Post with statistics on trafficking-related prosecutions, convictions and sentences achieved during the assessment period.

Investigations and prosecutions of trafficking-related crimes during the last year include:

-- On 10 December 2009, in a landmark ruling, a criminal court sentenced a Kuwaiti employer in absentia to 16 years in jail for sexually and physically abusing a Filipina maid in his employ and issued a warrant for his arrest; the employer absconded and as of December 12 had not been apprehended, according to local press reports. The Philippines Embassy had filed charges on behalf of the woman in March after she had been hospitalized for a head wound requiring 24 stitches. In her sworn statement, she claimed that her employer sexually assaulted her and threatened to kill her if she refused his advances, according to the Philippines Embassy.

-- On 22 December 2009, Kuwait's Criminal Court sentenced a Kuwaiti woman to 15 years in prison for murdering her housemaid. According to press reports, the maid had been assaulted and mortally injured by her employer and then denied medical care for a period of three days prior to being transported in critical condition to a hospital, where she expired.

-- On 6 January 2010, the Kuwaiti Criminal Court found a Kuwaiti woman guilty of physically abusing a domestic worker in her employ, and sentenced her to two years imprisonment. However, this sentence was subsequently suspended upon payment of a 100 KD fine (USD 350). The Indonesian maid was

allegedly beaten, scalded by boiling water and branded with a heated knife.

-- In the past year, the GOK charged fifteen Kuwaiti citizens and a larger number of expats with domestic labor abuse. However, the 10 December 2009 sentence of 16 years is unusually stiff. By comparison, a Kuwaiti citizen charged with murder for beating his maid to death in July was sentenced to ten years.

ii. Enact already drafted anti-trafficking legislation that prohibits severe forms of trafficking, including trafficking for the purpose of involuntary servitude and commercial sexual exploitation. Status of progress: Kuwait's draft anti-TIP law has been approved by the Council of Ministers and now must be debated and passed by the parliament in order to be ratified. It is currently listed as the twentieth item on parliament's agenda for discussion.

iii. Conduct a training program to educate and sensitize law enforcement officers, judges, prosecutors and other government officials on the effective handling of trafficking cases. In February 2009, the Ministry of Interior (MOI) Undersecretary approved anti-TIP training for fifteen MOI officers. The International Organization for Migration (IOM) held the two-week training in May 2009.

iv. Establish a permanent shelter for trafficking victims to replace the low-capacity temporary shelter currently in use. Status of progress: In August 2008, a site for the permanent shelter was identified, a former elementary school building. The Ministry of Social Affairs and Labor (MOSAL), the lead governmental agency for the shelter, is waiting for official handover of the site from the Ministry of Education. Once the site is officially turned over to MOSAL, renovation of the building is expected to begin. MOSAL has already allocated approximately USD 2.5 million for the renovation.

25C Question: To what kind of conditions are the trafficking victims subjected?

23C Answer: In Kuwait, most trafficking victims are recruited as domestic or menial labor, not for the commercial sex trade. Victims are usually brought into the country with promises of salaries and jobs that do not materialize once they arrive. The most common problems are non-payment of salaries, work hours in gross excess of contract stipulations, and withholding of passports. Some domestic workers face additional problems of restriction of movement, unsuitable living conditions and physical and sexual abuse.

Another problem is "visa trading" or "residence permit trading" in which sponsors (all foreign workers in Kuwait must have a Kuwaiti sponsor) profit by charging workers for sponsorship. In many cases, workers pay very high fees to recruiters (sometimes in Kuwait but often in source countries) for a right to procure a job in Kuwait. Some of these workers arrive in the country to find out that the jobs they were promised do not exist while others are aware that no job exists but come in the hopes of obtaining one upon arrival.

There are also reports of people promising runaway domestic workers well-paid service industry jobs and non-domestic work visas, then coercing the workers into prostitution. (NOTE: Domestic workers receive Article 20 visas. These visas are restrictive and fall under the jurisdiction of the MOI. All other foreign private sector workers are given Article 18 visas which fall under the jurisdiction of MOSAL. END NOTE) The GOK asserts that cases of actual coercion are rare, and that most of the women apprehended for prostitution made conscious choices to work as prostitutes. The number of cases that involve coercion is unknown.

25D Question: Are certain groups of persons more at risk of human trafficking (e.g. women and children, boys versus girls, certain ethnic groups, refugees, IDPs, etc.)? If so, please specify the type of exploitation for which these

groups are most at risk.

25D Answer: Adult female domestic workers make up the group most at risk of being trafficked. Men and women working in low-skilled sectors such as janitorial services are also victims of various forms of exploitation. There does not seem to be a specific bias against any one nationality or ethnicity; however, poorly educated female expatriate nationals appear to be the most vulnerable.

25E Question: Traffickers and Their Methods: Who are the traffickers/exploiters? Are they independent business people? Small or family-based crime groups? Large international organized crime syndicates? What methods are used to gain direct access to victims? For example, are the traffickers recruiting victims through lucrative job offers? Are victims sold by their families, or approached by friends of friends? Are victims "self-presenting" (approaching the exploiter without the involvement of a recruiter or transporter)? If recruitment or transportation is involved, what methods are used to recruit or transport victims (e.g., are false documents being used)? Are employment, travel, and tourism agencies or marriage brokers involved with or fronting for traffickers or crime groups to traffic individuals?

25E Answer: Labor recruitment offices in both Kuwait and source countries and local employers are the most common traffickers. Employment/recruitment agencies are involved in trafficking. (NOTE: For further information please refer to answer 25C. END NOTE) To restrict traffickers, on February 9, 2009, the MOI issued new guidelines requiring sponsors to show proof of owning a house before obtaining a visa for a domestic servant.

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SETTING THE SCENE FOR THE GOVERNMENT'S ANTI-TIP EFFORTS

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14. (SBU) Please find below responses to questions in paragraph 26 of reftel:

26A Question: Does the government acknowledge that trafficking is a problem in the country? If not, why not?

26A Answer: The GOK recognizes that labor exploitation occurs, but enforcement officials are overwhelmed by the foreign workers' huge numbers (there are over two million foreign workers in Kuwait and only one million Kuwaiti citizens). The GOK defines trafficking more narrowly than the USG; it defines trafficking as a systematic phenomenon, whereas it views the situation in Kuwait as consisting of isolated individual cases of workers whose rights were abused. The GOK acknowledges that some workers face difficulties but it denies that this constitutes a systemic problem and points to the fact that the vast majority of foreign workers come to Kuwait and remain voluntarily in order to take advantage of higher wages and better work conditions than may be available in their home countries. The general view held by GOK officials is that a few publicized extreme cases of worker abuse have unfairly maligned the entire system.

26B Question: Which government agencies are involved in efforts to combat sex and labor trafficking - including forced labor - and, which agency, if any, has the lead in these efforts?

26B Answer: The Ministries of Social Affairs and Labor, Awqaf (Religious Endowments) and Islamic Affairs, Interior and Justice are all involved in anti-trafficking efforts. The MOI monitors the concerns related to domestic workers and MOSAL is the relevant ministry for all other foreign workers. Although in the past it had been unclear which ministry had the lead on TIP and coordination among the various ministries is episodic and inconsistent, over the past year Minister of Social Affairs and Labor Mohammad Al-Afasi has demonstrated an apparent desire to direct and strengthen these efforts:

-- On August 9, the Ministry of Social Affairs and Labor (MOSAL) issued a Ministerial resolution -- not subject to Parliamentary approval -- to immediately permit most foreign workers to change employers after three years of work, without first having to secure the permission of the current Kuwaiti sponsor.

-- One week earlier, on August 2, Minister Al-Afasi publicly proposed the complete abolition of the GOK's current sponsorship system for foreign workers as a way of combating trafficking in persons.

-- Separately, Minister Al-Afasi told the press that Kuwait had strongly backed the proposal at the June 8 meeting of GCC foreign ministers to exempt Yemenis from any sponsorship requirements, and expressed the view he hoped this policy would be adopted soon.

26C Question: What are the limitations on the government's ability to address this problem in practice? For example, is funding for police or other institutions inadequate? Is overall corruption a problem? Does the government lack the resources to aid victims?

26C Answer: The GOK does not lack the financial resources to combat TIP or to aid its victims. To date, the GOK has shown an inability to effectively define trafficking and a lack of political will to address TIP as a problem. Most trafficking abuses involve domestic workers in private homes, an area culturally considered sacrosanct, where the GOK has been reluctant to intrude in order to investigate and prosecute Kuwaiti citizens.

Kuwaiti officials argue that the expatriate labor community's size (approximately 67 percent of the population), diversity (over 100 nationalities) and low education profile make combating TIP difficult.

The GOK faces considerable obstacles in implementing its various commitments to combat trafficking. Legislative efforts to properly define and criminalize trafficking were hindered by a parliamentary dissolution and cabinet reshuffles. There have been four reshuffles in the past four years, as well as incessant wrangling between government and parliament that often stymied the legislative process altogether.

26D Question: To what extent does the government systematically monitor its anti-trafficking efforts (on all fronts -- prosecution, victim protection, and prevention) and periodically make available, publicly or privately and directly or through regional/international organizations, its assessments of these anti-trafficking efforts?

26D Answer: The GOK does not systematically monitor its anti-trafficking efforts and instead tends to investigate abuse claims under existing criminal and civil codes. However, Kuwaiti suspects under investigation tend to receive less scrutiny from GOK authorities than do third country nationals.

26E Question: What measures has the government taken to establish the identity of local populations, including birth registration, citizenship, and nationality?

26E: The GOK registers the birth of all citizens and foreign workers. Although the GOK did not previously issue birth certificates to its 100,000 stateless "Bidoon" residents, since March 2008 the GOK has increasingly registered Bidoon births and issued certificates to Bidoon newborns.

26F Question: To what extent is the government capable of gathering the data required for an in-depth assessment of law enforcement efforts?

26F Answer: The GOK is fully capable of gathering the data required for an in-depth assessment of law enforcement efforts.

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INVESTIGATION AND PROSECUTION OF TRAFFICKERS

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15. (SBU) Please find below responses to questions in paragraph 27 of reftel:

27A Question: Does the country have a law or laws specifically prohibiting trafficking in persons -- both for sexual exploitation and labor? If so, please specifically cite the name of the law(s) and its date of enactment and provide the exact language (actual copies preferable) of the TIP provisions. Please provide a full inventory of trafficking laws, including non-criminal statutes that allow for civil penalties against alleged trafficking crimes (e.g., civil forfeiture laws and laws against illegal debt). Does the law(s) cover both internal and transnational forms of trafficking? If not, under what other laws can traffickers be prosecuted? For example, are there laws against slavery or the exploitation of prostitution by means of force, fraud, or coercion? Are these other laws being used in trafficking cases?

27A Answer: The GOK does not have a law specifically prohibiting trafficking in persons. The GOK has draft legislation that has been approved by the Council of Ministers but has not yet been presented to the Parliament for consideration.

There are several laws that address TIP-related crimes including:

-- Kuwait criminal law criminalizes kidnapping, detention and slave trading with penalties as severe as life imprisonment.

-- Article 31 of Kuwait's constitution protects against restriction of movement, torture, or "degrading" treatment.

-- Law 16/1960 criminalizes forced labor or exploitation as well as maltreatment of all kinds of individuals. If the maltreatment amounts to torture and leads to death, it is considered first degree murder. In addition, rape can lead to execution and incitement of (sexual) immorality can result in up to seven years imprisonment.

-- MOSAL decree 152/2004 forbids underage employment in dangerous industries.

-- Ministerial decree 152/2004 forbids the use of camel jockeys younger than 18 years.

-- Ministerial decree 152/2007 forbids sponsors/employers from withholding passports.

Traffickers can also be prosecuted for committing violence against workers. In a landmark 10 December 2009 ruling, a criminal court sentenced a Kuwaiti employer in absentia to 16 years in jail for sexually and physically abusing a Filipina maid in his employ and issued a warrant for his arrest; the employer absconded and as of December 12 had not been apprehended, according to local press reports. The Philippines Embassy had filed charges on behalf of the woman in March after she had been hospitalized for a head wound requiring 24 stitches. In her sworn statement, she claimed that her employer sexually assaulted her and threatened to kill her if she refused his advances, according to the Philippines Embassy.

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On 23 December 2009, the National Assembly passed especially important new legislation: a new private sector labor law, which came into effect on 23 January 2010. The approximately 70 new articles and amendments in the updated law are largely viewed as beneficial to Kuwait's expatriate laboring community. Pressure from concerned governments, international organizations and NGOs, and reform initiatives undertaken by Minister of Social Affairs and Labor (MOSAL) Dr. Mohammed Al-Afasi are credited with providing the impetus for the passage of this bill into law. Benefits to private workers include:

-- more favorable working conditions, -- longer leaves, -- higher severance pay, -- more secure salaries (minimum wage for workers according to their professions).

(U) Of key importance in the amendments is a provision for the establishment of a state-owned recruitment company to oversee and manage the importation of foreign labor, a move intended to eliminate visa trading and illicit recruitment of foreign workers. The new law also punishes more harshly -- 3 years imprisonment and/or raised fines up to KD 5000 -- the illicit recruitment of workers. The passage of this law, though it does not address the plight of Kuwait's half million domestic workers, may pave the way for an anti-TIP bill previously approved by the National Assembly's legislative committee.

27B Question: What are the prescribed and imposed penalties for trafficking people for commercial sexual exploitation, including for the forced prostitution of adults and the prostitution of children?

27B Answer: Since there is no anti-trafficking legislation, there are no prescribed penalties for any trafficking crimes. Forced prostitution is illegal, as are the activities of brothel owners/operators, clients, pimps and enforcers. Penalties include prison sentences for up to seven years depending on the level of involvement and the age of the sex workers.

27C Question: What are the prescribed and imposed penalties for labor trafficking offenses, including all forms of forced labor? If your country is a source country for labor migrants, do the government's laws provide for criminal punishment -- i.e. jail time -- for labor recruiters who engage in recruitment of workers using knowingly fraudulent or deceptive offers with the purpose of subjecting workers to compelled service in the destination country? If your country is a destination for labor migrants (legal/regular or illegal/irregular), are there laws punishing employers or labor agents who confiscate workers' passports or travel documents for the purpose of labor trafficking, switch contracts without the worker's consent as a means to keep the worker in a state of compelled service, or withhold payment of salaries as means of keeping the worker in a state of compelled service?

27C Answer: Law 16/1960 criminalizes forced labor and exploitation, and penalties range from up to seven years, imprisonment (for incitement of sexual immorality) to death

in cases of sexual crimes and murder.

Kuwait is not a source country for labor migrants.

A Ministerial Decree was issued in July 2007 (152/2007) forbidding the withholding of workers' passports. To date, this law has not been adequately enforced. Source country embassies report that over 90 percent of the domestic workers that come to the embassies for assistance do not have their passports with them.

Kuwaiti law criminalizes the withholding of salaries. Article 32 of the Kuwaiti Private Sector Law prohibits withholding a worker's salary or a portion of it, unless the employer is in debt, in which case up to 25% of the worker's salary can be deducted. However, this law is not adequately enforced, a fact cited by several thousand foreign laborers, who demonstrated violently in July 2008.

27D Question: What are the prescribed penalties for rape or forcible sexual assault? (NOTE: This is necessary to evaluate a foreign government's compliance with TVPA Minimum Standard 2, which reads: "For the knowing commission of any act of sex trafficking . . . the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault (rape)." END NOTE)

27D Answer: The maximum penalty for rape is death.

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